The simplest way would seem to be to employ a process of elimination in the charge to the jury. Let the judge start with a clear case of liability, and work toward a clear case in which there is no liability, in such a manner as to bear on the facts of the question before the jury. In this way could be obtained the elasticity considered in the article referred to as essential in any rule of liability. To start with a clear case, then, suppose the persons brought in by the surgeons were prompted to come by idle curiosity merely. Can the line be drawn between that case and one where the on-lookers are medical students? Desirable as it is to do so, what is the difference between the two acts that warrants the distinction? Under the influence of the modern scientific spirit a fundamental difference is felt, which makes one act seem wanton, while the other can only be regarded with approval. In the latter case there can be no *injuria* if the law is to protect right-minded persons in their right to privacy without encouraging squeamish plaintiffs. This is not to assert a right to study a person's case, however interesting, against his will, express or implied. It is merely to say that one who is rightfully taken into the operating room of a hospital is not to be presumed to object to that which is regularly done there.

As to the second ground on which the action is based, it is a truism to say that unless the patient's identity is in some way connected with the published description there is no infringement of the right to privacy. It is the same question that arises in the law of libel.

RIGHT OF A BENEFICIARY TO SUE ON A CONTRACT. — LAWRENCE *v.* FOX AGAIN. — The anomalous doctrine that "whenever one makes a promise to another for the benefit of a third person, the latter may maintain an action at law upon such a promise," has received another severe blow in New York; *Lawrence* v. *Fox*, 20 N. Y. 268, the weightiest authority to be found in its favor, has been again distinguished, and sharply restricted. In *Buchanan* v. *Tilden*, 39 N. Y. Supp. 228, the defendant had agreed with the plaintiff's husband, in consideration of valuable services rendered to defendant in a lawsuit, that if the defendant should win the suit he would pay to the wife fifty thousand dollars. The defendant won his suit, and the wife brought this action on the contract in her own name. The court refused to allow her to recover, and distinguished *Lawrence* v. *Fox*, quoting from the opinion in *Vrooman* v. *Turner*, 69 N. Y. 284, to this effect: "The courts are not inclined to extend the case of *Lawrence* v. *Fox* to cases not clearly within the principle of that decision. Judges have differed as to the principle on which *Lawrence* v. *Fox* and kindred cases rest, but in every case in which an action has been sustained there has been a debt or duty owing by the promisee to the party claiming to sue upon the promise." The opinion subsequently proceeds: "This and similar cases that might be cited, in which *Lawrence* v. *Fox* has been distinguished, will show that that case has been sharply criticised and its scope materially limited, and that the tendency of the decisions is to adhere to the rule of the common law that one cannot acquire rights under a contract to which he is not a party." The court then holds that, while the husband was bound to support his wife, he was not bound to make her a present of fifty thousand dollars, and therefore the case need not follow *Lawrence* v. *Fox*.

The idea that some other person than the promisee can maintain an

action upon a promise, solely because he is beneficially interested in its performance, seems now in a fair way to lose the influence which it has had in some of our State courts. Long ago the English courts repudiated it, the United States and the Massachusetts courts have practically denied it, and now a New York court has refused to apply it any further than it can help. (See 8 HARVARD LAW REVIEW, 93; 9 id. 233.) In the common case of a promise by a bank to a depositor to pay his checks, even courts which fully accept *Lawrence* v. *Fox* will not support an action by the check-holders against the bank, though they are certainly legal creditors of the promisee. (See 9 HARVARD LAW REVIEW, 539.) There is, to be sure, a considerable class of cases where the purchaser of mortgaged land has assumed to pay off the mortgage debt; and the courts have allowed the mortgagee to enforce the payment of the debt by such a purchaser. Of this sort is the recent case of *Solicitors' Loan and Trust Co.* v. *Robins*, 54 Pac. Rep. 39 (Wash.), in which, however, there is a vigorous dissenting opinion. But whenever relief is given in these cases, it ought to be upon purely equitable grounds; as is declared in the opinion in *Keller* v. *Ashford*, 133 U. S. 610, cited as the leading authority in *Trust Co.* v. *Robins* (*supra*), which expressly denies that the right of the mortgagee under certain circumstances to take advantage of an obligation entered into by a purchaser of the mortgaged property results from any legal right of the mortgagee to sue on a contract the discharge of which would be for his benefit. See also on this point *Green* v. *Stone*, 34 Atl. Rep. 1099, a recent New Jersey case.

LIBEL INVITED BY THE PLAINTIFF. — That one who procures the publication by another of a libel to his agents, for the purpose of making it the foundation of an action, cannot recover, is a well established rule of law. It has been recently reaffirmed by the Supreme Court of New York. *Miller* v. *Donovan*, 39 N. Y. Supp. 820. In that case, which is a good type of the class in question, the plaintiff having learned that the defendant had in his possession a libellous letter concerning him, sent to the defendant agents, who, by means of false representations, induced the defendant to read the letter to them. A conclusion not only in accord with the authorities, but also of evident soundness and rectitude, should rest on definite and substantial grounds. Yet Giegerich, J., who delivered the opinion of the court, while intimating that the occasion was privileged, supported the decision chiefly on the broad but uncertain basis of apparent justice. The opinions, too, in the few earlier cases on the subject, in all of which the same result has been reached, have not strength either in agreement with one another or in sufficient reason severally. Such a state of the authorities is not satisfactory.

The view taken by the judges in the earliest cases was that publication to the plaintiff's agents was, in truth, merely communication to the plaintiff himself, and that consequently there was no publication. *King* v. *Waring*, 5 Esp. 15; *Smith* v. *Wood*, 3 Camp. 323. The difficulty with this is that it puts a purely fictitious meaning on the word "publication." One is an agent without losing his identity, and a communication is made not only to the agent, but also to the thinking and reasoning being. Besides, if the "no publication" theory is adopted, how are cases where there has been a previous unprivileged publication to be dealt with? It has several times been held that where the defendant had spoken slanders,